



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2005-02933

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221434.

The Richardson Independent School District (the "district") received a request for information concerning a named district employee.¹ You state that the district has released some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.³

¹We note that the district sought and received clarification from the requestor that she seeks to obtain information concerning the employee's education, professional certification, and experience, as well as information about any complaints the district has received against the employee, and any reprimands and evaluations that the district maintains concerning her.

²Although you raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Please note that section 552.117 is the proper exception to raise when arguing the confidentiality of such information.

Additionally, we note that you also raise sections 552.107 and 552.114 of the Government Code as possible exceptions to disclosure. Because you have presented no arguments under section 552.107 or 552.114, we presume you have withdrawn your claims under these sections and therefore will not address them.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that a portion of the information is excepted from disclosure under section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides, "A document evaluating the performance of a teacher or administrator is confidential." This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* You state that the named district employee in question is a certified educator. You also state that portions of the submitted information consist of documents evaluating the performance of this named district employee. Based on the reasoning set out in Open Records Decision No. 643, we conclude that one submitted document is confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold the document that we have marked as confidential under section 21.355 of the Education Code.

You submitted to this office an Employment Eligibility Verification I-9 Form and attachments. An I-9 Form is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of these documents under the Act would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the I-9 Form and its attachments are confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.⁴

You assert that the submitted college transcripts belonging to the named district employee are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(b) states:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

⁴As our ruling for the I-9 Form and its attachments is dispositive, we need not consider the applicability of section 552.130 to this information.

Gov't Code § 552.102(b). Upon review, we find that with the exception of information concerning the employee's curricula and degree obtained, you must withhold the submitted transcripts pursuant to section 552.102(b) of the Government Code.⁵

You also indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential pursuant to section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time that the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the district. The district may not withhold such information under section 552.117(a)(1) for an employee who did not make a timely election to keep the information confidential. Based on our review of the remaining submitted information, we agree that you must withhold the information you have highlighted, plus some additional information we have marked, under section 552.117(a)(1) of the Government Code, provided that the district employee with whom this information is associated elected confidentiality for this information prior to the date that the district received this request for information.

Notwithstanding the district employee's election pursuant to section 552.024, you argue that her social security number and information concerning her family members are confidential under section 552.101 in conjunction with the common-law right to privacy.⁶ Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has since concluded that other types of information also are protected from disclosure by the common-law right to privacy. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies

⁵As our ruling for this information is dispositive, we need not consider your other claimed exceptions for it.

⁶Section 552.101 also encompasses the doctrine of common-law privacy.

the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure).

After carefully considering your arguments and reviewing the information at issue, we find that no portion of this information is protected from disclosure by the common-law right to privacy. Accordingly, we conclude that the district may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

You also argue that section 552.136 is applicable to the district employee's social security number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. We note, however, that the district employee's social security number does not constitute a "credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body." Accordingly, the district employee's social security number may not be withheld under section 552.136.

We note, however, that the district employee's social security number may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim section 552.137 is applicable to an e-mail address you have marked in the remaining submitted information. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Thus, the district must withhold this e-mail address under section 552.137 unless the district employee has affirmatively consented to its release. *See* Gov't Code § 552.137(b).

In summary, pursuant to section 552.101 of the Government Code, the district must withhold the document that we have marked as confidential under section 21.355 of the Education Code. The I-9 Form and attachments must be withheld under section 552.101 in conjunction with federal law. With the exception of information concerning the employee's curricula and degree obtained, the district must withhold the submitted transcripts pursuant to section 552.102(b) of the Government Code. Provided the district employee at issue timely elected to keep the information confidential, the district must withhold the information you have highlighted and that we have marked in the submitted documents pursuant to section 552.117(a)(1) of the Government Code. Otherwise, the information may not be withheld under section 552.117(a)(1). The employee's social security number may nevertheless be excepted under section 552.101 in conjunction with federal law. The district must withhold the marked e-mail address under section 552.137 unless the district employee has affirmatively consented to its release. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

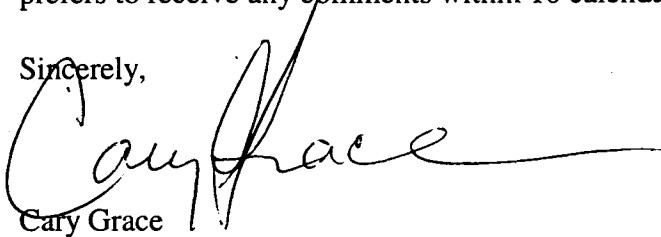
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 221434

Enc. Submitted documents

c: Ms. Valarie Martinico
6841 Gateridge Drive
Dallas, Texas 75254
(w/o enclosures)